

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

FILED
U.S. DISTRICT COURT
DISTRICT OF NEBRASKA

15 JUL -7 PM 1:25

OFFICE OF THE CLERK

RANDALL S. KRAUSE,

Plaintiff,

v.

CITY OF OMAHA,

Defendant.

8:15cv197

**PLAINTIFF'S RESPONSE
TO DEFENDANT'S MOTION
TO DISMISS**

RESPONSE

In citizen suits alleging open dumping under the Resource Conservation and Recovery Act ("RCRA"), the courts determine if the materials in question constitute "solid waste" under RCRA. Cases of this nature should not be dismissed simply because the defendant does not believe that the materials constitute solid waste.

Plaintiff, Randall S. Krause ("Krause"), has clearly stated the alleged facts in this case. Sodium chloride and sodium ferrocyanide (the "materials") sit on the dirt shoulders of streets in a floodplain adjacent to Carter Lake ("the floodplain"). The materials are there because the Defendant (the "City") applied them to the streets for snow and ice control. The materials can no longer serve their intended purpose once they are on the dirt shoulders. The Court will have to determine the legal status of the materials that sit on the dirt shoulders.

Krause alleges that the materials constitute solid waste under RCRA because they were disposed of by runoff and are not recovered. The City is in violation of the prohibition against open dumping in RCRA § 4005(a) and 40 CFR § 257.3-1(a) because the City applied the materials to streets designed by the City to drain runoff to the dirt shoulders. Because the streets do not have curbs or storm drains, the materials remain on the dirt shoulders in the floodplain where they can be carried away by the base flood.

During the course of the trial, Krause will attempt to prove the allegations made in the Complaint. Krause prays that the Court will give him this opportunity by not dismissing this case.

7/7/2015
Date Executed

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Certificate of Service

I certify that on July 7, 2015, I mailed a true and accurate copy of the foregoing PLAINTIFF'S RESPONSE TO DEFENDANT'S MOTION TO DISMISS by United States Postal Service, postage prepaid, to Ryan J. Wiesen at 1819 Farnam St., Suite 804, Omaha, NE 68183.

Randall S. Krause